UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JESSICA M.,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 17-464JJM
	:	
NANCY A. BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Plaintiff Jessica M. is a young woman who claims that she has been unable to work since November 30, 2011, through her date last insured (March 31, 2016), due to the extreme fatigue caused by an autoimmune disorder variously diagnosed as lupus or Sjögren's syndrome, as well as by an array of mental impairments. Overlaying this complex medical picture is Plaintiff's ongoing struggle with alcohol abuse. Despite the complexity of the medical history, the gaps in the medical evidence, and the lack of any opinion evidence (other than treating sources and a non-examining source whose opinions were afforded little weight), the Administrative Law Judge ("ALJ") performed his own interpretation, determined that Plaintiff suffered from the severe impairments of lupus, Sjögren's syndrome, posttraumatic stress disorder ("PTSD"), attention deficit disorder ("ADD/ADHD") and alcohol abuse, but retained the residual functional capacity ("RFC")[1] to perform sedentary work with additional limitations.

Whether error taints the ALJ's finding that "claimant was not under a disability" is now before the Court on Plaintiff's motion to reverse the Commissioner's decision denying her

[1] Residual functional capacity is "the most you can still do despite your limitations," taking into account "[y]our impairment(s), and any related symptoms, such as pain, [that] may cause physical and mental limitations that affect what you can do in a work setting." 20 C.F.R. § 404.1545(a)(1).

Disability Insurance Benefits ("DIB") application under 42 U.S.C. § 405(g) of the Social Security Act (the "Act"). Defendant Nancy A. Berryhill ("Defendant") has filed a motion for an order affirming the Commissioner's decision. The matter has been referred to me for preliminary review, findings and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Having reviewed the record, I find that the ALJ's findings rest on improper lay judgments regarding matters that are well beyond the ken of commonsense and, therefore, are not supported by substantial evidence. Accordingly, I recommend that Plaintiff's Motion for Reversal of the Disability Determination of the Commissioner of Social Security (ECF No. 13) be GRANTED and Defendant's Motion for an Order Affirming the Decision of the Commissioner (ECF No. 15) be DENIED.

I. Background

Beginning when she was teenager, Plaintiff appears to have consistently worked at times, for example at McDonald's when she was sixteen, culminating in work during college as an EMT[2] until she stopped due to extreme fatigue symptoms in November 2011 at the age of twenty-four. After moving with her husband to St. Louis, she struggled to finish college, but despite overwhelming fatigue, she completed her nursing degree in early 2012.

Treating records during the period from the date of onset through March 2014 are focused on the diagnosis and treatment of autoimmune disorder. In March 2012, based on laboratory testing, as well as symptoms that included extreme fatigue, sleeping eighteen hours per day with "compulsive episodes which force her to go to sleep," Plaintiff was diagnosed at the Washington University School of Medicine with an unspecified autoimmune disorder and

[2] The ALJ found Plaintiff's work history to be suggestive of the lack of motivation to work because her income was low. This finding does not make sense. Plaintiff was a high school and college student during much of the period prior to the date of her alleged onset of disability, working part-time and only full-time in the summers. See Tr. 52.

treatment was initiated. Tr. 274-75. In August 2012, lupus was diagnosed. Tr. 399. In May 2013, Plaintiff was referred for a sleep study after a preliminary evaluation of abnormal sleepiness, although the sleep study itself does not appear to be in the record. Tr. 401-05. In March 2014, symptoms of fatigue, brain fog and muscle weakness over the prior two years were reported and a rheumatologist diagnosed Sjögren's syndrome. Tr. 417, 421. Consistently during this period from early 2012 through March 2014, the array of professionals who examined Plaintiff noted her extreme fatigue and linked it to the autoimmune disorder, which was confirmed by laboratory testing. Also mentioned are various mental impairments, including depression, anxiety and ADHD, which were treated with medication, but not by a medical professional specializing in mental health treatment.

During the next period, from April 2014 through April 2015, there are no treating records.[3] Other references suggest that during this period, Plaintiff and her husband moved to Maryland and then separated, later divorcing. Tr. 58. One later record indicates that, during 2014, Plaintiff was drinking alcohol at a rate that she later described as "being at her worst . . . drinking a liter of vodka daily." Tr. 464-65. Meanwhile, on May 4, 2014, Plaintiff filed her DIB application alleging disability since November 30, 2011. After Plaintiff failed to return forms to support her application by the fourteen-day deadline, her application was denied initially on July 24, 2014. The very next day, July 25, 2014, Plaintiff and her soon-to-be-estranged[4] husband filled in Function Reports and a Work History report, but it was too late. Because Plaintiff's application was processed through the experimental "Single Decision Maker" model, the administrative phase was closed with a finding of "not disabled" based on "failure to cooperate"

[3] There is no suggestion in the record that either Plaintiff or the ALJ made any effort to develop the record by filling this gap.

[4] It does not appear that they had separated when Plaintiff's then-husband signed the Function Report.

on July 24, 2014. Plaintiff requested a hearing before an ALJ, but then waited almost two years before one was scheduled.

Meanwhile, the treating record resumed in April 2015, by which time Plaintiff had moved back to Rhode Island and was divorcing and living with her mother. During this latter period, the record primarily reflects extensive outpatient mental health treatment at Lifespan, including a partial hospitalization at Rhode Island Hospital.[5] Throughout these treating records are repeated references to treatment for alcohol abuse disorder, sometimes described as being in remission and other times active, with at least one extended hospitalization for detox in September 2015.

Some of the mental health treatment beginning in April 2015 through the date last insured is with a psychiatrist, Dr. Anthony Gallo, who saw Plaintiff approximately once a month. Most of it is with the therapist to whom Dr. Gallo referred Plaintiff, Deirdre A. Gale, MA, LMHC. Ms. Gale had weekly appointments with Plaintiff, occasionally less frequently. Over the period from intake to Plaintiff's date last insured, there are more than twenty such encounters. At each, Ms. Gale recorded objective mental status observations, which are consistently abnormal.[6] E.g., Tr. 607 (manner: withdrawn; affect: depressed; thought process: nonlinear, slowed; thought content: worthlessness, guilt, failure; suicidal ideation: passive; judgment: fair; memory: some long-term lapse; attention and concentration: poor). The Gale treating records include repeated

[5] The records from the partial hospitalization are not in the record.

[6] A few of Ms. Gale's early treating notes include global assessment of functioning, or GAF, scores of 53, specifically from May through September 2015. Tr. 472, 495, 507, 514. A GAF score between 51 and 60 indicates moderate symptoms or moderate limitations in social or occupational functioning. Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed. text rev. 2000) (hereinafter "DSM-IV-TR"). Before and after that, Ms. Gale did not use the GAF scoring system. The only other relevant GAF scores are two assessed by physicians at Rhode Island Hospital, 45 in May 2015, and 30 in September 2015. Tr. 670-71, 691. A GAF of 45 reflects serious symptoms or impairment in occupational functioning, while a GAF of 30 is indicative, *inter alia*, of the inability to function in almost all areas. DSM-IV-TR 34.

references to Plaintiff's daily struggle to stay awake even for a few hours. E.g., Tr. 593 (treating goal set for Plaintiff to get up by 11 am and stay awake for twelve hours); Tr. 605 (Plaintiff getting up at noon and back in bed within one to four hours). The Gale treating notes also reflect the adverse impact of these observed symptoms on Plaintiff's ability to function. E.g., Tr. 468 ("consistent decompensation since [autoimmune] dx & increasing alcohol abuse as a coping mechanism . . . significant inability to attend ADLs and severe depression"). Consistent with these treating notes, Ms. Gale submitted an opinion in support of Plaintiff's application, which opines to significant impairment in the mental ability to do even unskilled work. Tr. 435-40.

During this period, there are no records reflecting treatment for Plaintiff's autoimmune disorder, although the mental health records repeatedly mention Plaintiff's ongoing struggle with extreme fatigue, including her inability to stay awake for more than a few hours. Ms. Gale's notes reflect discussion with Plaintiff of her need to connect with a physician to address those symptoms. Finally, at the very end of the period, Plaintiff began to see Dr. Ronald Romano; however, there are no treating records reflecting this relationship. After Plaintiff's date last insured, Dr. Romano submitted an opinion in support of her DIB application. Tr. 442-45. Dated June 20, 2016, it confirms the diagnoses of autoimmune disorder based on laboratory test results, as well as anxiety and alcohol abuse, endorses chronic fatigue as a symptom and opines that Plaintiff would be "off-task" at least 15% of the time and cannot work at fast-paced tasks. Tr. 442-43, 445. The remainder of the form is not filled in.

II. Standard of Review

The Commissioner's findings of fact are conclusive if supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is more than a scintilla – that is, the evidence must do more than merely create a suspicion of the existence of a fact, and must include such relevant

evidence as a reasonable person would accept as adequate to support the conclusion. Ortiz v. Sec'y of Health & Human Servs., 955 F.2d 765, 769 (1st Cir. 1991) (per curiam); Rodriguez v. Sec'y of Health & Human Servs., 647 F.2d 218, 222 (1st Cir. 1981); Brown v. Apfel, 71 F. Supp. 2d 28, 30 (D.R.I. 1999). Once the Court concludes that the decision is supported by substantial evidence, the Commissioner must be affirmed, even if the Court would have reached a contrary result as finder of fact. Rodriguez Pagan v. Sec'y of Health & Human Servs., 819 F.2d 1, 3 (1st Cir. 1987); see also Barnes v. Sullivan, 932 F.2d 1356, 1358 (11th Cir. 1991); Lizotte v. Sec'y of Health & Human Servs., 654 F.2d 127, 128 (1st Cir. 1981). The determination of substantiality is based upon an evaluation of the record as a whole. Brown, 71 F. Supp. 2d at 30; see also Frustaglia v. Sec'y of Health & Human Servs., 829 F.2d 192, 195 (1st Cir. 1987); Parker v. Bowen, 793 F.2d 1177, 1180 (11th Cir. 1986) (court also must consider evidence detracting from evidence on which Commissioner relied). Thus, the Court's role in reviewing the Commissioner's decision is limited. Brown, 71 F. Supp. 2d at 30. The Court does not reinterpret the evidence or otherwise substitute its own judgment for that of the Commissioner. Id. at 30-31 (citing Colon v. Sec'y of Health & Human Servs., 877 F.2d 148, 153 (1st Cir. 1989)). "[T]he resolution of conflicts in the evidence is for the Commissioner, not the courts." Id. at 31 (citing Richardson v. Perales, 402 U.S. 389, 399 (1971)).

III. Disability Determination

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. § 416(I); 20 C.F.R. § 404.1505. The impairment must be severe,

making the claimant unable to do previous work, or any other substantial gainful activity which exists in the national economy. 42 U.S.C. § 423(d)(2); 20 C.F.R. §§ 404.1505-1511.

A. The Five-Step Evaluation

The ALJ must follow five steps in evaluating a claim of disability. See 20 C.F.R. § 404.1520. First, if a claimant is working at a substantial gainful activity, the claimant is not disabled. 20 C.F.R. § 404.1520(b). Second, if a claimant does not have any impairment or combination of impairments that significantly limit physical or mental ability to do basic work activities, then the claimant does not have a severe impairment and is not disabled. 20 C.F.R. § 404.1520(c). Third, if a claimant's impairments meet or equal an impairment listed in 20 C.F.R. Part 404, Appendix 1, the claimant is disabled. 20 C.F.R. § 404.1520(d). Fourth, if a claimant's impairments do not prevent doing past relevant work, the claimant is not disabled. 20 C.F.R. § 404.1520(e)-(f). Fifth, if a claimant's impairments (considering RFC, age, education and past work) prevent doing other work that exists in the local or national economy, a finding of disabled is warranted. 20 C.F.R. § 404.1520(g). Significantly, the claimant bears the burden of proof at Steps One through Four, but the Commissioner bears the burden at Step Five. Wells v. Barnhart, 267 F. Supp. 2d 138, 144 (D. Mass. 2003) (five step process applies to both DIB and SSI claims).

The claimant must prove the existence of a disability on or before the last day of insured status for the purposes of disability benefits. Deblois v. Sec'y of Health & Human Servs., 686 F.2d 76, 79 (1st Cir. 1982); 42 U.S.C. §§ 416(i)(3), 423(a), 423(c). If a claimant becomes disabled after loss of insured status, the claim for disability benefits must be denied despite disability. Cruz Rivera v. Sec'y of Health & Human Servs., 818 F.2d 96, 97 (1st Cir. 1986).

B. Treating Physicians and Other Sources

Substantial weight should be given to the opinion, diagnosis and medical evidence of a treating physician unless there are good reasons to do otherwise. See Rohrberg v. Apfel, 26 F. Supp. 2d 303, 311 (D. Mass. 1998); 20 C.F.R. § 404.1527(c). If a treating physician's opinion on the nature and severity of a claimant's impairments is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is not inconsistent with the other substantial evidence in the record, the ALJ must give it controlling weight. Konuch v. Astrue, No. 11-193L, 2012 WL 5032667, at *4-5 (D.R.I. Sept. 13, 2012); 20 C.F.R. § 404.1527(c)(2). The ALJ may discount a treating physician's opinion or report regarding an inability to work if it is unsupported by objective medical evidence or is wholly conclusory. See Keating v. Sec'y of Health & Human Servs., 848 F.2d 271, 275-76 (1st Cir. 1988). The ALJ's decision must articulate the weight given, providing "good reasons" for the determination. See Sargent v. Astrue, No. CA 11–220 ML, 2012 WL 5413132, at *7-8, 11-12 (D.R.I. Sept. 20, 2012) (where ALJ failed to point to evidence to support weight accorded treating source opinion, court will not speculate and try to glean from the record; remand so that ALJ can explicitly set forth findings).

When a treating physician's opinion does not warrant controlling weight, the ALJ must nevertheless weigh the medical opinion based on the (1) length of the treatment relationship and the frequency of examination; (2) nature and extent of the treatment relationship; (3) medical evidence supporting the opinion; (4) consistency with the record as a whole; (5) specialization in the medical conditions at issue; and (6) other factors which tend to support or contradict the opinion. 20 C.F.R § 404.1527(c). A treating physician's opinion is generally entitled to more weight than a consulting physician's opinion. See 20 C.F.R. § 404.1527(c)(2). If a treating source is not accorded controlling weight, the ALJ must apply the factors listed in 20 C.F.R. § 404.1527(c). As SSR 96-2p provides:

> The notice of the determination or decision must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight.

SSR 96-2p, 1996 WL 374188 (July 2, 1996). The regulations confirm that, "[w]e will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion." 20 C.F.R. § 404.1527(c)(2). However, where a treating physician has merely made conclusory statements, the ALJ may afford them such weight as is supported by clinical or laboratory findings and other consistent evidence of a claimant's impairments. See Wheeler v. Heckler, 784 F.2d 1073, 1075 (11th Cir. 1986).

A treating source who is not a licensed physician or psychologist is not an "acceptable medical source." 20 C.F.R. § 404.1513; SSR 06-03p, 2006 WL 2263437, at *2 (Aug. 9, 2006). Only an acceptable medical source may provide a medical opinion entitled to controlling weight to establish the existence of a medically determinable impairment. SSR 06-03p, 2006 WL 2263437, at *2. An "other source," such as a nurse practitioner or licensed clinical social worker, is not an "acceptable medical source," and cannot establish the existence of a medically determinable impairment, though such a source may provide insight into the severity of an impairment, including its impact on the individual's ability to function. SSR 06-03p, 2006 WL 2263437, at *2-3. In general, an opinion from an "other source" is not entitled to the same deference as an opinion from a treating physician or psychologist. Id. at *5. Nevertheless, the opinions of medical sources who are not "acceptable medical sources" are important and should be evaluated on key issues such as severity and functional effects, along with other relevant evidence in the file. Id. at *4.

IV. Analysis

Plaintiff principally challenges the ALJ's critical RFC finding as made from "whole cloth" because he rejected both treating source opinions, as well as the only examining source,[7] and there are no other medical source opinions in this record. As Plaintiff contends, with no medical expert as a guide, the ALJ relied on his lay experience to assess the significance of the laboratory tests, mental status evaluations and other clinical observations in the record and deployed that lay assessment as the foundation to reject both treating source opinions, to discount Plaintiff's statements and those of her then-husband, and to formulate a complex and nuanced RFC. Plaintiff contends that an RFC so constructed lacks the support of substantial evidence.

This argument is well founded. The ALJ's approach to this case runs counter to the fundamental principle that disability determinations may not be based on "judging matters entrusted to experts." Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1991); see Morey v. Colvin, C.A. No. 14-433M, 2015 WL 9855873, at *13 (D.R.I. Oct. 5, 2015), adopted, No. CV 14-433-M-PAS, 2016 WL 224104 (D.R.I. Jan. 19, 2016) (remand denied because ALJ did not rely solely on lay judgment where examining psychologist interpreted mental status observations); Renaud v. Colvin, 111 F. Supp. 3d 155, 163 (D.R.I. 2015) (impermissible for ALJ to find complaints were inconsistent with "good recall, memory, concentration and thought" in the absence of expert evidence to that effect); Forbes v. Colvin, No. CA 14-249-M-PAS, 2015 WL 1571153, at *11 (D.R.I. Apr. 8, 2015) (ALJ lacked expert opinion to support relationship between raw evidence and claimant's ability to stand or walk). Only when there is little or no evidence of any

[7] The administrative denial by a "Single Decision Maker" decided the claim of physical impairment entirely based on Plaintiff's "failure to cooperate." Tr. 74. The only examiner asked to review the record was Dr. Terry Dunn, a psychologist, who reviewed only the records from Missouri before Plaintiff initiated mental health treatment, and found insufficient evidence to substantiate the presence of a disorder. Id. The ALJ correctly afforded little weight to this opinion in light of the substantial evidence of treatment for serious mental impairments that was not added to the record until after Dr. Dunn performed her review. Tr. 23.

impairment during the relevant period is review by a medical professional not needed. Castle v. Colvin, 557 F. App'x 849, 854 (11th Cir. 2014) (per curiam); see Manso-Pizarro, 76 F.3d at 17-19 ("further evaluation by an expert" not needed if condition is "so mild as to make it obvious to a layperson that the claimant's ability to perform her particular past work as a cook's helper was unaffected"). That is, if the only medical findings in the record establish that the claimant has exhibited little in the way of impairments, the ALJ may reach the conclusion regarding the claimant's ability to work himself, without relying on the opinion of a medical professional. Gordils v. Sec'y of Health & Human Servs., 921 F.2d 327, 329 (1st Cir. 1990) (per curiam). Otherwise, at least as to the RFC,[8] a medical opinion is required.

Here, the ALJ evaluated a record with significant severe impairments that caused serious functional limitations – far from "little in the way of . . . impairments." Gordils, 921 F.2d at 329. And the ALJ acknowledged as much with his RFC finding that Plaintiff, a young woman with a college degree in nursing, was so seriously impaired by the diagnosed autoimmune disorder and mental conditions as to be incapable even of the full range of sedentary work, in that she suffered additional significant physical and mental limitations. As the guidance from our Circuit makes clear, Plaintiff's complex medical history, including the interplay of physical (autoimmune disorder) and serious mental impairments, is simply not susceptible of a commonsense-based lay interpretation as the foundation for the RFC. See Manso-Pizarro, 76 F.3d at 16-17. Further, the potentially disabling impact of Plaintiff's alcohol use exacerbates the complexity of the medical analysis, yet it was largely ignored by the ALJ.

[8] Courts are somewhat more liberal in allowing a commonsense judgment to be made at Step 2. Chretien v. Berryhill, No. 1:16-cv-00549-JAW, 2017 WL 4613196, at *6 (D. Me. Oct. 15, 2017) (expert opinion critical for "assessment at Step 4 of a claimant's RFC, not assessment at Step 2 of whether an impairment is severe"); Small v. Colvin, No. 2:14-cv-042-NT, 2015 WL 860856, at *7 (D. Me. Feb. 27, 2015) (cases like Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999), holding that ALJ cannot rely on his lay judgment, pertain to Step Four; at Step Two, ALJ may base finding of nonseverity on claimant's failure to seek treatment for much of alleged disability period).

Also flawed are the ALJ's "good reasons" for rejecting the opinion of the treating source physician, Dr. Romano, that Plaintiff would be off-task 15% of the time.[9] First, the ALJ relied on the fact that Dr. Romano's treating notes had not been submitted; however, it is well settled that the lack of treating notes is insufficient to justify the rejection of a treating source opinion. Soto-Cedeno v. Astrue, 380 F. App'x 1, 3 (1st Cir. 2010) (unpublished opinion). Second, the ALJ relied on the fact that Dr. Romano's involvement with Plaintiff did not begin until after her date last insured; however, this reason ignores the clinical basis for the Romano opinion, which rests on his expert interpretation of testing from well before the date last insured. Third, the ALJ relied on the absence of medical evidence to support Dr. Romano's opinion that Plaintiff would be off-task 15% of the time; however, this finding ignores the ample evidence from throughout the relevant period of Plaintiff's extreme fatigue, resulting in sleeping much of the day, as well as the consistent finding by the therapist, Ms. Gale, of poor (occasionally fair) attention and concentration. Finally, the ALJ relied on Dr. Romano's failure to complete the form by filling in other functional limits. However, there is nothing about the incomplete form that undermines the opinion that Dr. Romano did provide regarding Plaintiff's proclivity to be off-task. Confirming that the ALJ's approach to this treating source was tainted by error is that the ALJ cherry-picked the Romano report. That is, the decision accepts the limitation that Plaintiff could not perform fast-paced work, which the vocational expert did not find to be work-preclusive, but, without explanation for the distinction, rejects the limitation (off-task 15% of the time) that would result in a finding of disabled.

Equally troubling are the ALJ's justifications for affording little weight to Ms. Gale's opinion, which is based on an extensive treating relationship, including detailed clinical

[9] This functional limitation is material. The vocational expert testified that being off-task 15% of the time would preclude all work. Tr. 67.

observations made at over twenty encounters. The focus of the ALJ's analysis is on the supposed inconsistency between the Gale opinion and Ms. Gale's treating notes.[10] However, this reason rests only on Ms. Gale's reference in her opinion to "Highest GAF Past year: 45," Tr. 435, which contrasts with her treating GAF of 53 in the first three of the twelve preceding months. Nevertheless, after September 2015, through the date of her opinion, which was signed on June 15, 2016, Ms. Gale stopped using the GAF scoring system in her treating notes. And the only other GAF scores in the record – 45 and 30 from May and September 2015, respectively – are consistent with the Gale opinion. Otherwise, Ms. Gale's treating notes reflect seriously abnormal mental status observations that appear to be entirely consistent with the functional limitations in her opinion. Importantly, the Gale opinion meshes with that of Dr. Romano in that she opined that Plaintiff's inability to stay awake and her impaired concentration would effectively result in her being off-task significantly more than 11% of the time. Tr. 437.

With remand required to correct these errors, I also find that the ALJ's determination that Plaintiff's limitations were caused by her "choice," Tr. 22, is tainted by the lack of a medical expert to interpret the medical significance of Plaintiff's claim that she was unable (not unwilling) to stay awake. I similarly agree with Plaintiff that at least one of the ALJ's reasons for rejecting Plaintiff's then-husband's Function Report ("affection") is implausible in light of the couple's separation and divorce, which closely followed. Otherwise, the ALJ seems illogically to have discounted the then-husband's observations as coming from a source who lacked medical expertise because those observations clashed with the ALJ's own conclusions

[10] The ALJ also relied on the inconsistency between the Gale opinion and "the totality of the evidence of record." Tr. 23. If this is a reference to Dr. Gallo's notes, there is no doubt that the Gallo mental status observations were relatively benign, while at the same time Dr. Gallo was aware of Plaintiff's serious mental health issues and of Ms. Gale's work with Plaintiff; indeed, he repeatedly referred Plaintiff back to Ms. Gale to continue therapy. In these circumstances, it is a matter of medical expertise, and not a simple lay judgment, to square Dr. Gallo's treating observations with those from Ms. Gale.

about Plaintiff's condition, which themselves were formed by an observer with no medical expertise. Therefore, I recommend that Plaintiff's statements and those from her now ex-husband should be reevaluated in light of the medical opinions that the ALJ procures on remand to fully develop this record.

V. Conclusion

Based on the foregoing analysis, I recommend that Plaintiff's Motion for Reversal of the Disability Determination of the Commissioner of Social Security (ECF No. 13) be GRANTED and Defendant's Motion for an Order Affirming the Decision of the Commissioner (ECF No. 15) be DENIED.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
November 7, 2018